

Executive Summary

FNS Instruction 113 - Policy on Nondiscrimination

The FNS Policy on Nondiscrimination, as it relates to both federally funded and unfunded programs, has been thoroughly reviewed and updated. This task was a collaboration of Headquarters' Civil Rights Division, regional civil rights staff, Headquarters' program liaisons and various stakeholders. Changes to the instruction primarily reflect an incorporation of the legislative changes that occurred over the last several years and a clearer description of the roles, responsibilities and processes for handling complaints of discrimination. The following describes the changes made to each section of the instruction.

Sections I – Purpose

The bases for discrimination (race, color, national origin, age, sex, or handicap) were deleted from the purpose statement and an all encompassing phrase was added, so that the last part now reads “....enforcement of the prohibition against discrimination in all recipient's programs and activities, whether federally funded or not.”

Section II – Authority

Repealed citations were culled and six relevant citations were added (**in bold**):

- Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d to 2000d-6
- **Americans with Disabilities Act (28 CFR Part 35, Public Law 101-336, Title II, Subtitle A).**
- Title IX of the Education Amendments of 1972, and USDA Implementing Regulation, 7 CFR 15a.
- Section 504 of the Rehabilitation Act of 1973, Public Law 93-112, and USDA Implementing Regulation, 7 CFR 15b
- Age Discrimination Act of 1975 (45 CFR Part 91).
- **The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), and Department of Justice Memorandum dated January 28, 1999 on Enforcement of Title VI of the Civil Rights Act of 1964 and Related Statutes in Block Grant Type Programs.**
- **Civil Rights Restoration Act of 1987.**
- **1977 Food and Agriculture Act, Public Law 95-113.**
- **Presidential Executive Order 13166, Improving Access To Services For Persons With Limited English Proficiency, August 11, 2000.**
- **USDA Departmental Regulation 4330-2, Activities Receiving USDA Financial Assistance.**

Program Appendices include additional authorities.

Section III - Policy

Several terms have changed to reflect current legislation, and several categories of protected classes have been added to certain programs. Now the policy reads:

FNS is committed to affording every employee and customer fair and equitable treatment without regard to race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. Also, reprisal of any kind against employees or customers is prohibited.

Not all prohibited bases apply to all programs. Program Appendices list exceptions to this policy.

Section IV - Applicability

This section was not changed. All programs and activities administered by FNS in which Federal financial assistance or other services are provided to the public by a State agency, local agency or other subrecipients are covered by the FNS nondiscrimination policy.

Section V - Definitions

Several new terms have been added to this revised Instruction as result of new legislation and new OMB reporting requirements. Other new terms are the result of changes in how we conduct business, for example, Alternative Dispute Resolution (ADR). All of the definitions used in the Instruction have been revised where necessary to provide a clearer understanding of how new policies are applied.

Definitions added: Alternative Dispute Resolution, Civil Rights, Civil Rights Act and Regulations, Corrective Action Plan, Disability, Federal Financial Assistance, Local Agency or other subrecipient, Memorandum of Understanding, Participants, Program Compliance Review, Prohibited Bases, Project Area, Special Compliance Review, Standard Operating Procedures, State Agency, and Underserved Group or Community.

Section VI - Responsibilities

All of USDA management is responsible for taking an increased role in ensuring compliance with nondiscrimination policies. At the regional level, Regional Civil Rights Directors have been delegated increased responsibility from Regional Administrators:

- USDA's Office of Civil Rights is assigned staff responsibility for the development, implementation, coordination and enforcement of all aspects of the Department's civil rights program.
- The FNS Administrator is assigned line responsibility for implementing a comprehensive civil rights program that ensures nondiscrimination compliance in all FNS programs and activities.
- Regional Administrators provide direction, leadership and resources to ensure proper implementation of the regional civil rights compliance program.
- Regional Civil Rights Directors in collaboration with appropriate regional program

and administrative staff will provide technical and operational assistance, direction and leadership in implementing the civil rights policies of FNS programs, as well as, processing, managing and facilitating resolution of civil rights complaints in accordance with guidance from FNS headquarters Civil Rights Division.

Section VII - Limited English Proficiency

All the provisions in this section are relatively new. Title VI of the Civil Rights Act of 1964 prohibits recipients of Federal financial assistance from discriminating against or otherwise excluding individuals on the basis of race, color, or national origin in any of their activities. Pertaining to Title VI, Executive Order 13166, and other civil rights regulation, the Federal government, state agencies, local agencies or other subrecipients are to take reasonable steps to assure “meaningful” access to the information and services they provide. State agencies are directed to consider a number of different factors in determining meaningful access for persons of limited English proficiency (LEP). Among the factors to be considered are the:

- number of proportion of LEP persons in the fully eligible service population,
- frequency with which LEP individuals come in contact with the program,
- importance of the service provided by the program, and
- resources available to the recipient.

Former Part One – Interagency Coordination and Responsibilities

This has been deleted as a section, however, the contents have been incorporated throughout the revised instruction.

Section VIII - Public Notification

Program availability was added as a primary function of the State public notification system, and a provision for web-based information was created. The purpose of a State public notification system is to inform potential eligibles, applicants and participants of:

- program availability,
- program rights and responsibilities,
- nondiscrimination policy, and
- procedures for filing a complaint.

In addition, the focus of notification has now shifted toward underserved groups in three categories:

- race and ethnicity,
- persons with limited English proficiency, and
- persons with disabilities.

Section IX - Assurances

No changes. Compliance with all nondiscrimination laws, regulations, Instructions and guidelines is required and, where applicable, the assurance can be incorporated into the Federal/State/local/subrecipient agency agreement.

As in the past, FNS Regional Offices are responsible for reviewing, approving and monitoring FNS/State agency agreements. State agencies are responsible for monitoring compliance with the agreements that cover their programs. State agencies are also responsible for reviewing, approving and monitoring local agency and other subrecipient agreements.

Section X - Civil Rights Training

No additional requirements for training were added. However, responsibilities for performing training have been clarified. This training may be carried out as part of annual ongoing technical assistance.

The Regional Offices and State agencies will be responsible for training the State agency staffs to include civil rights compliance in all aspects of program operations.

State agencies are responsible for training local agencies. Local agencies are responsible for training their subrecipients. So-called “Front Line Staff” must be trained annually.

Specific subject matter includes, but is not limited to:

- Collecting and using data,
- Effective public notification systems,
- Complaint procedures,
- Compliance review techniques,
- Resolution of noncompliance,
- Requirements for reasonable accommodation of persons with disabilities,
- Alternative dispute resolution techniques and guidelines.

Section XI - Data Collection and Reporting

Revised OMB reporting requirements directed the changes made to this section. States are now required to collect data on at least four multi-race categories for individuals who identify themselves as being of two races on the application form. In addition, State and local agencies were given more specific responsibilities to perform trend analysis on potential eligible populations, applicants and participants identified by racial, ethnic and linguistic category in their program service area. The procedures to collect, evaluate, report and analyze this data are program-specific, and are set forth in the specific program administrative regulations, policies, Instructions and guidelines.

Section XII - Compliance Reviews

This section has been significantly revised based on statutory requirements to provide clearer instructions. While major headings are the same, the content has been augmented; notably, paragraphs on review content now include examples of data and information to be collected and questions to be asked to aid in making a review determination.

Guidance on Corrective Action has been added.

Reports of alleged noncompliance made by the media, grassroots organizations or advocacy groups has been added to the list of situations for which a Special Compliance Review should be conducted.

Section XIII - Resolution of Noncompliance

Examples of prohibited discrimination were consolidated and a new one was added – *Selecting members for planning and advisory bodies in such a way as to exclude persons from membership on the basis of race, color,*

Negotiating with local agencies or subrecipients to achieve compliance was added to the responsibilities of the State agency.

The actions to be taken by each level of government in the process of resolving noncompliance have been further clarified to reflect USDA civil rights requirements and accountability criteria.

Several items are now the responsibility of HQ CRD, which was formerly assigned to the Assistant Attorney General or OCR.

Former Part Six – Compliance Work Plan

This part was deleted.

Section XIV - Complaints of Discrimination

Primary changes to this section reflect the fact that FNS has a recently revised Memorandum of Understanding with USDA OCR for complaint processing and resolution that directs FNS actions (see Section XII - Compliance Reviews). Some specific changes to this section are:

- The complainant must be advised of confidentiality and Privacy Act applications. The complainant and the entity that the complaint is filed against will be encouraged to resolve the issue at the lowest possible level and as expeditiously as possible and in accordance with guidelines on ADR.
- It is encouraged that complaint form format is collaboratively developed and coordinated among FNS, State agency, local agency and/or other subrecipient.
- A consent release provision and form were added.

Section XV - Procedures for Processing and Resolving Complaints of Discrimination

Responsibilities of State agencies, local agencies or other subrecipients in regard to discrimination complaint processing are set out in USDA regulations implementing civil rights laws and, in some instances, in program regulations. Several principle responsibilities of State agencies in this regard are to:

- maintain a processing system for discrimination complaints;
- process complaints within the time frames established by Departmental regulations and agreements;
- submit a description of the agency's discrimination complaint/grievance processing system to the FNS Regional Office for review;
- forward all complaints alleging discrimination on the basis of age, except as noted in the program specific appendix, to the appropriate Regional OCR within 5 working days after receipt.

FNS Headquarters and USDA Headquarters will maintain responsibility for oversight of FNS Regional Office actions in regard to processing of complaints of discrimination. This includes monitoring and evaluation during reviews of Regional Offices by Headquarters, as well as ongoing assessments of the complaint processing systems in place nationwide.